

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

IN THE MATTER OF:)	
Motorola 52 nd St.)	
Superfund Site)	DOCKET NO. 2002-07
)	
UNDER THE AUTHORITY OF THE)	AGREEMENT AND COVENANT
COMPREHENSIVE ENVIRONMENTAL)	NOT TO SUE
RESPONSE, COMPENSATION, AND)	CITY OF PHOENIX
LIABILITY ACT OF 1980,)	
42 U.S.C. § 9601, <u>et seq.</u> ,)	
as amended.)	

I. INTRODUCTION

1. This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States on behalf of the Environmental Protection Agency ("EPA") and the City of Phoenix ("Settling Respondent"). The United States and Settling Respondent are collectively referred to herein as the "Parties".

2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. The Settling Respondent is a municipal corporation of the State of Arizona with responsibility for operation and management of the Phoenix Sky Harbor International Airport ("Sky Harbor"). The principal offices for Sky Harbor are currently located at 3400 Sky Harbor Boulevard, Phoenix, AZ 85034. Sky Harbor is located adjacent to the southern boundary of the Motorola 52nd Street Superfund Site in Phoenix, AZ and is not currently part of the Site. Settling Respondent plans to acquire a total of 400 acres of property as part of an expansion plan for Sky Harbor. Settling Respondent plans to acquire this property in phases and use this property for aviation-related uses, including, but not limited to, airfields, terminals, parking operations, air cargo operations, car rental operations, airport administrative functions and aircraft maintenance operations. This Agreement covers approximately 0.5 acres of land.

4. This Agreement applies only to the Two (2) contiguous parcels of property identified below (both of which are owned by

the same Seller)(collectively, the "Property"). Settling Respondent has entered into a conditional purchase agreement with the Seller of the Property to purchase this Property. The Property is located within the area encompassed by Operable Unit Two of the Motorola 52nd Street Superfund Site and is more specifically described below and in Exhibit 1.

Paul W. Grimmett, Jr. as Successor Trustee of the Grimmett Family Trust, and Individually, (collectively, "Seller") located at 4141 and 4143 E. Washington Street, Phoenix, Arizona, as described in Exhibit 1 of this Agreement, consisting of the 0.5 acre parcel currently in use by two (2) businesses, Supreme Auto Care Center and Drive Line Services of Phoenix, Inc. Located on the Property are two (2) buildings totalling approximately 6,679 sq. ft.

5. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling Respondent for the Existing Contamination at the Property which would otherwise result from Settling Respondent becoming the owner of the Property.

6. The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

7. The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

8. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

9. "Existing Contamination" shall mean:

a. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the effective date of this Agreement;

b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of this Agreement; and

c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the effective date of this Agreement.

10. "Institutional Controls" shall mean the covenants, easements, restrictions, conditions, and other equivalent requirements and controls authorized by EPA with respect to Existing Contamination for one or more of the following purposes: (1) to restrict the use of groundwater; (2) to limit human or animal exposure to Existing Contamination; (3) to ensure that there is no interference with the performance, operation, and maintenance of any selected response action; and (4) to ensure the integrity and effectiveness of any selected response action.

11. "Parties" shall mean the United States on behalf of EPA and the Settling Respondent.

12. "Property" shall mean that portion of the Site, encompassing approximately 0.5 contiguous acres, which is described in Exhibit 1 of this Agreement, that is listed in paragraph 4 above.

11. "Settling Respondent" shall mean the City of Phoenix.

14. "Site" shall mean the Motorola 52nd Street Superfund Site in Phoenix, Arizona. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants that may have been released from the Property have come to be located.

15. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

16. The Settling Respondent is a municipal corporation of the State of Arizona and the sponsor of Sky Harbor, which is subject to federal laws and grant assurances that pertain to the use of the Property and Sky Harbor. The Settling Respondent is the buyer in the Contingent Purchase Agreement for the Property located within the Site. The Contingent Purchase Agreement for

the Property has an extended Closing Date, and the Property is to be used for public purposes; therefore, EPA is willing to grant an extended period of time, up to eighteen (18) months, for the acquisition of the Property by Settling Respondent in order that the Property may be subject to this Agreement.

17. The Property consists of two contiguous parcels located within the Site in an area currently consisting of commercial, industrial and residential uses.

18. The Settling Respondent has informed EPA that the Property is to be acquired for the purpose of expanding Sky Harbor. The Property will be used for aviation-related purposes, including but not limited to airfields, terminals, parking operations, air cargo operations, car rental operations, airport administrative functions and aircraft maintenance operations.

19. The Settling Respondent is a potentially responsible party at the Site due to its ownership of a portion of the Site. Settling Respondent has resolved its liability for EPA costs incurred at the Site and for a portion of EPA costs to be incurred at the Site in a Consent Decree entered in the United States District Court for the District of Arizona on November 29, 2000. The Parties acknowledge and agree that this Agreement and the Covenant Not to Sue in Section VIII hereof have no effect on Settling Respondent's status as a potentially responsible party due to its ownership of a portion of the Site (described in paragraph 27(b)).

20. The Settling Respondent represents, and for the purposes of this Agreement, EPA relies on those representations, that Settling Respondent's involvement with the Property has been limited to inspecting, auditing and performing environmental audits and other due diligence of the Property in connection with Settling Respondent's intended purchase of the Property.

IV. PAYMENT

21. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein, Settling Respondent agrees to pay to EPA the sum of Ten Thousand Dollars (\$10,000), within thirty (30) days of the effective date of this Agreement. The Settling Respondent shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region 9, EPA Docket number 2002-07 and EPA Site Number 09BE, DOJ case number 90-11-3-06000/2 and name and address of Settling Respondent. Payment shall be sent to:

U.S. EPA
Region IX, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Notice of payment (including a copy of the check and transmittal letter) shall be sent to those persons listed in Section XV (Notices and Submissions), and to:

Donald Loi
Financial Management Specialist (PMD-6)
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, California 94105

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Attn: Karl Fingerhood, DOJ Ref. # 90-11-3-06000/2

The cash amount paid by Settling Respondent pursuant to this Agreement shall be deposited into a Special Account and shall be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

22. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

23(a). Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to provide to EPA and its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is reasonably required under CERCLA and RCRA for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions at the Property and/or the Site under federal law. EPA agrees to provide reasonable notice to the Settling Respondent of the timing of any response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access

authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.

23(b). The Parties acknowledge that the Settling Respondent is purchasing the Property for future aviation-related uses and that FAA approval is required for construction and many other activities at the airport. Federal statutes, regulations and other authorities that will be applicable to the use and management of the Property include, but are not limited to, 49 U.S.C.A. Sections 47107(a), 47101(g) and 40113; 49 C.F.R. Part 1500 "Civil Aviation Security Rules"; 14 C.F.R. Part 139, "Airport Certification" including the Airport Certification Manual promulgated under 14 C.F.R. Subpart C; 14 C.F.R. Part 77, "Objects Affecting Navigable Airspace"; FAA Order 5100.38(A) Grants Manual, including Part V, Grant Assurances; and FAA Order 5190.6(A), Airport Operations Manual.

24. Within 15 days after Settling Respondent's acquisition of fee title to the Property, Settling Respondent shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Maricopa County, State of Arizona, which shall provide notice to all successors-in-title that the Property (as identified in Exhibit 1) is part of the Site, that EPA selected an interim groundwater remedy for the Site in July, 1994, and that the potentially responsible parties are subject to a U.S. EPA Administrative Order for Remedial Action Docket No. 98-15, requiring construction and two years of operation & maintenance of the OU2 remedy. Such notices shall identify the name and docket number of the case, and the date the Administrative Order was signed by EPA. The Settling Respondent shall record the notice(s) within 10 days of EPA's approval of the notice(s). The Settling Respondent shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

25. The Settling Respondent, to the extent that it has legal authority to do so, shall ensure that assignees, successors in interest, lessees, and sublessees of each of the Property shall provide the same access and cooperation, including any Institutional Controls required for the Property. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of the Agreement.

VI. DUE CARE/COOPERATION

26. The Settling Respondent shall exercise due care at the Property with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Property, and may require closure of its operations on the Property or a part thereof. The Settling Respondent agrees to cooperate fully with EPA in the implementation of response actions at the Property and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all necessary and appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

27(a). By entering into this agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Settling Respondent and all information in the possession or control of its elected officials, officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property and to its qualification for this Agreement. As Phase II site investigation reports are completed, City will provide them to the EPA.

27(b). The Settling Respondent may be liable under CERCLA due to its ownership of the Honeywell International facility located on East Air Lane, Phoenix, Arizona as described in City Leases numbered 2190 and 3293. Aside from any liability that Settling Respondent may have incurred by reason of its ownership of the aforementioned Honeywell International facility, Settling Respondent certifies that, to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at

the Site. If the United States determines that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

28. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment) of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination. This covenant not to sue takes effect on the date the Settling Respondent acquires such Property. However, in the event that the Settling Respondent does not acquire the Property within eighteen (18) months of the effective date of this Agreement, this covenant not to sue does not apply to that Property. The Parties acknowledge and agree that this covenant has no effect on any liability Settling Respondent may have as a result of ownership of a portion of the Site as described in paragraphs 19 and 27 of this Agreement.

IX. RESERVATION OF RIGHTS

29(a). The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

- (1) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), and Section XIV (Payment of Costs);
- (2) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;
- (3) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

(4) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(5) criminal liability;

(6) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA;

(7) liability for violations of local, State or federal law or regulations; and

(8) liability arising from Settling Respondent's ownership of a portion of the Site as described in paragraphs 19 and 27.

29(b). Notwithstanding the covenant not to sue set forth in Section VIII above or any other provision of this Agreement, the United States reserves its rights to respond to contamination, whether Existing Contamination or other contamination, at, or from the Property whenever response may be necessary to protect human health or the environment. Such response may include, but is not limited to, requiring if and as necessary that the owner(s) of the Property, whether Settling Respondent or its successors or assigns, implement the following Institutional Controls that EPA determines are necessary for achieving protection of human health, welfare, or the environment.

(1) Securing the Property to prevent public access by means including, but not limited to, fencing and/or the use of security personnel;

(2) Deed restrictions to prevent or restrict use of groundwater underlying the Property.

(3) Deed restrictions to prevent use of the Property other than for aviation-related purposes.

30. With respect to any claim or cause of action asserted by the United States, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

31. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any

person, firm, corporation or other entity not a party to this Agreement.

32. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site or the Property. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Respondent acknowledges that it is purchasing Property where response actions may be required.

X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

33. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Property or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Property, or any claims arising out of response activities at the Property, including claims based on EPA's oversight of such activities or approval of plans for such activities.

Nothing in this paragraph shall be construed to impair any claims that the Settling Respondent could assert pursuant to 42 U.S.C. §9623 for qualified costs.

34(a). The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

34(b). Nothing in this Agreement is intended to substitute for, supercede, or bar any protections that would be available to the Settling Respondent under any other state or federal law,

including the Small Business Liability Relief and Brownfields Act of 2002.

XI. PARTIES BOUND/TRANSFER OF COVENANT

35. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding on the Settling Respondent, its elected officials, officers, directors, employees, and agents. The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section VIII shall apply to Settling Respondent's elected officials, officers, directors, or employees, to the extent that the alleged liability of the elected official, officer, director, or employee is based on its status and in its capacity as an elected official, officer, director, or employee of Settling Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondent. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

36. No transferee of all or a portion of the Property shall have any right under this Agreement (except to the extent that paragraph 38 applies), including any right under Section VIII (United States' Covenant Not to Sue) or Section XVIII (Contribution Protection), unless:

36(a). At least thirty (30) days before the transfer, the transferee shall have submitted to EPA an affidavit which identifies the transferee and the property to be transferred, describes the proposed transfer, and certifies that:

(1) the transferee has not caused or contributed to the release or threat of release of any amount of the Existing Contamination;

(2) the transferee's use of the property will not result in a release or threat of release of any hazardous substance;

(3) the transferee's use of the property will not cause or contribute to the migration or release of any Existing Contamination or any threat to human health or the environment caused by any such release or threat of release; and,

(4) the person signing the affidavit is fully authorized to make the foregoing certifications and to legally bind the transferee;

36(b). EPA has consented in writing to the transfer of the rights, benefits and obligations conferred under the Agreement to the person taking possession of all or a portion of any of the Property. EPA will provide Settling Respondent with its determination within thirty (30) days of receipt of Settling Respondent's affidavit. Any failure by EPA to render a decision within thirty (30) days shall be construed as a denial; and

36(c). Prior to or simultaneous with the transfer of all or a portion of the Property, the transferee shall consent in writing to be bound by and perform, from the date of transfer, all of the terms and obligations of the Agreement as though it were Settling Respondent. These terms and obligations include, but are not limited to, those set forth in Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), Section VII (Certification), Section IX (Reservation of Rights), Section X (Settling Respondent's Covenant Not to Sue), Section XI (Transfer of Covenant), Section XII (Disclaimer), Section XIII (Document Retention), Section XIV (Payment of Costs), Section XV (Notices), Section XVIII (Contribution Protection) of this Agreement.

If at any time, EPA determines that the transferee's affidavit is not materially accurate or complete, the Covenant Not to Sue and Contribution Protection shall be null and void with respect to the transferee, and the United States reserves all rights it may have against the transferee.

37. If all conditions of paragraph 36 have been met, upon transfer of ownership of any of the Property:

37(a). Settling Respondent shall be released from the obligations set forth in paragraphs 23 and 25 (except for the first sentence of paragraph 25) (Access/Notice to Successors in Interest) of this Agreement; and

37(b). EPA shall be released from its obligations to Settling Respondent (but not to transferee) under paragraph 23 of this Agreement.

This provision does not apply to any lease of the Property. Settling Respondent shall not be released from any other obligations set forth in this Agreement, except as EPA and Settling Respondent agree otherwise and modify this Agreement in writing.

38. Any lessee or sublessee (collectively "lessee") on the Property may obtain the rights and benefits established by this Agreement, including any right under Section VIII (United States' Covenant Not to Sue) or Section XVIII (Contribution Protection),

by providing to EPA, prior to the date of tenancy, the written certification set forth in Exhibit 3. However, if at any time EPA determines that the lessee's certification is not materially accurate or complete, the Covenant Not to Sue and Contribution Protection shall be null and void with respect to the lessee, and the United States reserves all rights it may have against the lessee. Any lessee that is unable to provide the written certification set forth in Exhibit 3 may obtain the rights and benefits of this Agreement only by complying with the transfer requirements of paragraph 36. Whenever a lessee who has obtained the rights and benefits of this Agreement pursuant to this paragraph or paragraph 36 vacates the Property, Settling Respondent shall provide EPA written notice of the vacancy within thirty (30) days of the date upon which the lessee vacates.

39. Settling Respondent agrees to pay the reasonable costs, including attorneys' fees, incurred by EPA to review any subsequent requests for consent to assign or transfer the rights, benefits and obligations hereunder.

XII. DISCLAIMER

40. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

41. The Settling Respondent agrees to retain and make available to EPA all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. PAYMENT OF COSTS

42. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment) of this Agreement, it shall be liable for all litigation and other enforcement costs incurred under CERCLA by the United States to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

43. All notices to Settling Respondents should be sent to:

Cynthia Parker
Environmental Coordinator
City of Phoenix Aviation Department
Phoenix Sky Harbor International Airport
3400 Sky Harbor Boulevard
Phoenix, Arizona 85034

With a copy to:

David Krietor
Aviation Director
City of Phoenix Aviation Department
Phoenix Sky Harbor International Airport
3400 Sky Harbor Boulevard
Phoenix, Arizona 85034

And:

Craig J. Reece
Assistant City Attorney
City of Phoenix Law Department
200 West Washington Street, Suite 1300
Phoenix, Arizona 85003-1611

All notices to the United States should be sent to:

Allyn L. Stern
Office of Regional Counsel
U.S. EPA
75 Hawthorne Street (ORC-3)
San Francisco, California 94105

with a copy to:

Nadia Hollan
Superfund Remedial Project Manager
U.S. EPA
75 Hawthorne Street (SFD-8-2)
San Francisco, California 94105

Any party may change the name or address to which it receives notices by delivering written notice to the parties named herein.

XVI. EFFECTIVE DATE

44. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that EPA has fully executed the Agreement after review of and response to any public comments received. If Settling Respondent does not acquire the Property within eighteen (18) months of the effective date, this Agreement is not effective as to the Property.

XVII. TERMINATION

45. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

46. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are Settling Respondent's liability arising from its ownership of the Property, and all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person with respect to the Existing Contamination.

47. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

48. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on Settling Respondent.

XIX. EXHIBITS

49. Exhibit 1 shall mean the Title Reports describing the Property that are the subject of this Agreement.

50. Exhibit 2 shall mean the map depicting the Site.

51. Exhibit 3 shall mean the form certification letter, "Lessee's Certification of Compliance with Agreement and Covenant Not To Sue".

XXI. PUBLIC COMMENT

52. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

53. The Parties acknowledge Arizona Revised Statutes Annotated Section 38-511.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IX

BY: 

Jane Diamond
Acting Superfund Division Director

8/25/02
Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY: 

Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

8.6.02
Date

IT IS SO AGREED:

CITY OF PHOENIX, a municipal corporation
FRANK A. FAIRBANKS, City Manager

BY: 

DAVID KRIETOR
Aviation Director

6/26/02
Date

ATTEST:

BY: _____

City Clerk

APPROVED AS TO FORM:

BY: 

ACTING City Attorney

**REPORT FOR:
PURCHASE****CITY OF PHOENIX, ARIZONA
REAL ESTATE DIVISION
TITLE REPORT**

COSTCENTER: AV01000097-L

Q.S. NO.	COUNTY ASSESSOR'S NO.	PROJECT: AVIATION	PARCEL NO.
10-37	124-08-076C	4141 & 4143 East Washington Street	

LEGAL DESCRIPTION:

See attached page 2.

REQUIREMENTS FOR VESTING TITLE IN THE CITY OF PHOENIX:

1. Warranty Deed from: Paul W. Grimmer, Jr. and _____, Trustees / Successor Trustees of the Grimmer Family Trust dated December 20, 1991, as Owner by Quit-Claim Deed dated December 20, 1991, recorded December 24, 1991 in Document No. 1991-803968. (PART NO. 1)
2. Warranty Deed from: Paul W. Grimmer, a widower, as Owner by Joint Tenancy Deed dated January 16, 1969, recorded January 15, 1969 in Docket 7433, page 124 and Certificate of Death dated March 29, 2001, recorded April 2, 2001 in Document No. 2001-264408. (PART NO. 2)

Appropriate instruments from any parties holding unrecorded interests in the property as may be discovered by the negotiator and reported to Title Section.

SUBJECT TO:

1. Reservation contained in United States of America Patent recorded in Book 28 of Deeds, page 119.
2. Declaration of Restrictions recorded in Docket 154, page 464.
3. Taxes for the second half of 2001, a lien now payable, in the current amount of \$2,371.34.
4. Taxes for the year 2002, a lien not yet due and payable.

ADDRESSES:

1. Paul W. Grimmer, Jr., Trustee - 5426 E. Vernon Avenue Phoenix, 85008
2. Paul W. Grimmer - 5426 E. Vernon Avenue Phoenix, 85008

REMARKS:

1. Taxes searched through April 5, 2002.
2. Pursuant to A.R.S. section 33-401, the names and addresses of the Beneficiaries of the above cited trust are disclosed in Document No. 803968.
3. Certificate of Death for Fannie M. Grimmer recorded in Document No. 2001-264408. No Waiver of Estate Tax was found of record.

EFFECTIVE DATE: April 10, 2002
PREPARED BY: M. Earl Lewis, Jr.

LEGAL DESCRIPTION:

PART NO. 1:

Lots 7, 8, 9 and 10, Block 7, PORTLAND TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 11 of Maps, page 33;
TOGETHER WITH that part abandoned in Docket 2766, page 355, as vests by law and that part abandoned in Docket 7492, page 546, as vests by law;
EXCEPT Document No. 1984-39210.

PART NO. 2:

Lots 11 and 12, Block 7, PORTLAND TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 11 of Maps page 33;
TOGETHER WITH that part abandoned in Docket 2766, page 355, as vests by law and that part abandoned in Docket 7492, page 546, as vests by law;
EXCEPT Docket 2039, page 559; and
EXCEPT Docket 7492, page 534; and
EXCEPT Document No. 1984-39210.

EXHIBIT 2

MOTOROLA 52nd STREET SUPERFUND SITE

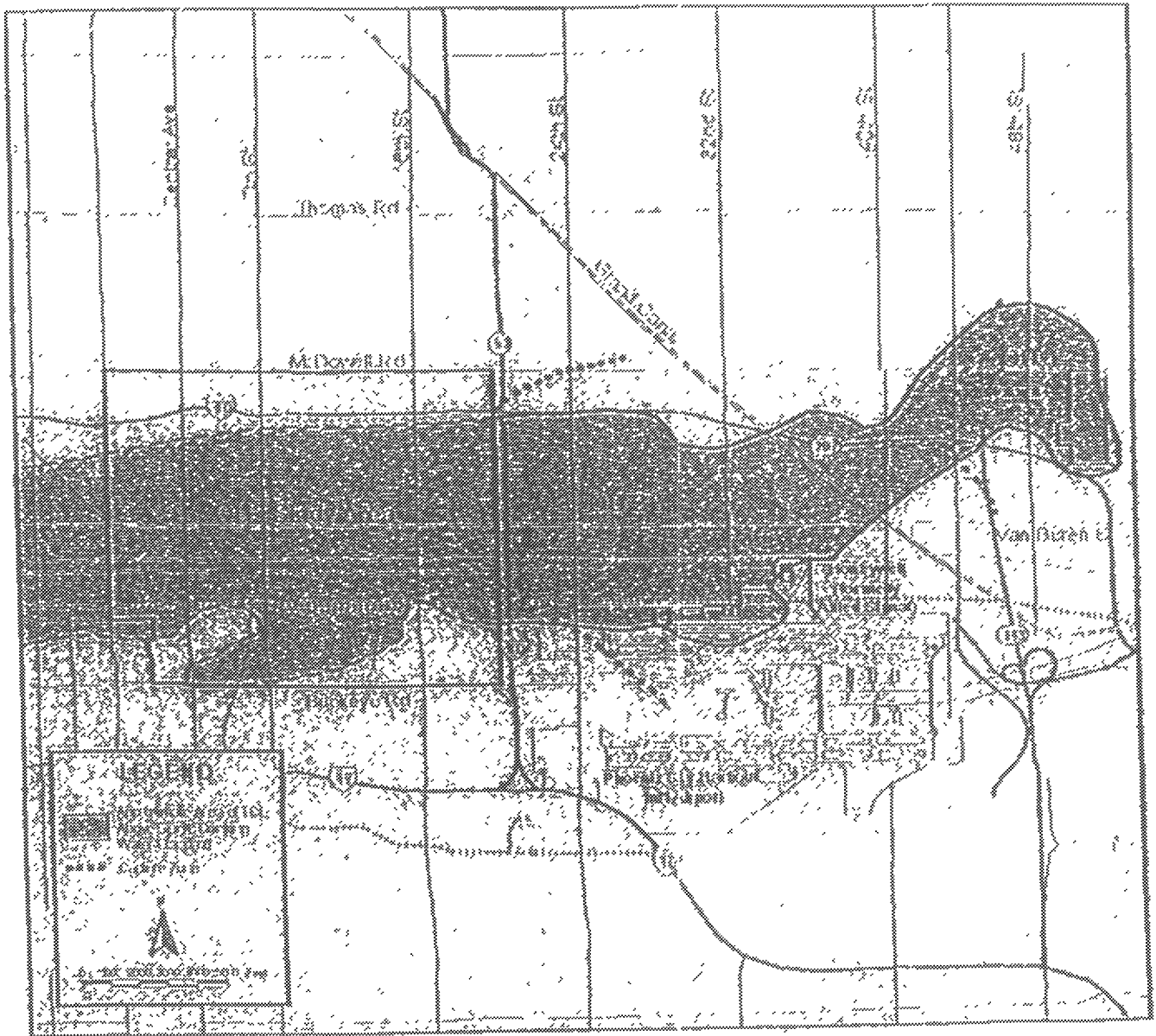


Exhibit 3

**LESSEE'S CERTIFICATION OF COMPLIANCE
WITH AGREEMENT AND COVENANT NOT TO SUE**

CERTIFIED MAIL
Allyn L. Stern
Senior Counsel (ORC-3)
U.S. EPA
75 Hawthorne Street
San Francisco, California 94105

Re: Lessee's Certification of Compliance with Agreement and
Covenant Not to Sue, Docket No.
Operable Unit Two, Motorola 52nd Street Superfund Site

In accordance with paragraph 38 of the Agreement and
Covenant Not to Sue, Docket No. ("Agreement"), the undersigned
party ("Lessee") hereby notifies the U.S. Environmental
Protection Agency ("EPA") that it intends to lease all or a
portion of real property that is the subject of the Agreement.
The Agreement was originally entered into by and between EPA and
the City of Phoenix and concerns the real property located at
[Identify address/property description of real property] (the
"Property").

[Insert a paragraph which identifies: (1) the parties to the
lease; (2) a description of the portion of the Property to be
leased; and (3) the effective date and term of the lease.]

Lessee acknowledges that it has reviewed the Agreement and
any modifications and notices thereto. Pursuant to paragraph 38
of Section XI of the Agreement (Parties Bound/Transfer of
Covenant), Lessee hereby agrees and certifies that:

(1) Lessee has not caused or contributed to the release or
threat of release of any amount of the Existing
Contamination;

(2) Lessee will not, over the course of any 12 month period,
generate, use or store any hazardous substance or extremely
hazardous substance, as defined in 42 U.S.C. §§ 9601(14), in
an amount equal to or exceeding its reportable quantity as
established by 42 U.S.C. §§ 9602(a), at the Property;

(3) Lessee will not use the Property in any manner that
could cause or contribute to the migration or release of any
Existing Contamination;

(4) Lessee will permit access to the Property as set forth in paragraph 23 of the Agreement;

(5) Lessee will exercise due care at the Site and cooperate with EPA as set forth in paragraph 27 of the Agreement; and

(6) Lessee will not interfere with response actions taken on or around the Property;

(7) Lessee will be bound by and subject to the terms of the Agreement, and will act consistent with the terms of the Agreement.

Upon submission of this letter to EPA, Lessee shall have the rights and benefits set forth in Sections VIII (United States' Covenant Not to Sue) and XVII (Contribution Protection) of the Agreement with respect to the leased portion of the Property. However, if at any time EPA determines that Lessee's certification is materially inaccurate or incomplete, the Covenant Not to Sue and Contribution Protection shall be null and void with respect to Lessee, and the United States reserves all rights it may have against Lessee.

Notices and submissions required under the Agreement that affect Lessee's interest in the Property shall be sent to the following contact persons for Lessee:

[Insert Contact Information]

So Acknowledged and Agreed:

Name and Title

Name of Business

Date